

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY

Application for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Illinois Public Utilities Act, to Construct, Operate, and Maintain a new 345 kilovolt transmission line in Ogle, DeKalb, Kane and DuPage Counties, Illinois

Docket 13-0657

**RESPONSE IN OPPOSITION TO:
BURLINGTON INTERVENORS MOTION TO STRIKE REQUEST FOR ICC TO APPROVE THE
“DAUPHINAIS ADJUSTMENT 2”**

Intervenors William Lenschow, Thomas Pienkowski, Kristine Pienkowski, John Tomaszewicz, Jerry Drexler, Kristin Drexler, Robert Mason, Diane Mason, and Ellen Roberts Vogel (together, “SKP Group”) respond in opposition to Burlington Intervenors Motion to Strike Request for ICC to Approve the “Dauphinais Adjustment 2 (the “Motion to Strike”), stating as follows:

1. On June 20, 2014, the Burlington Group¹ filed their Motion to Strike. It requests that undefined, unknown, and unstated portions of the record, briefings, and other filings, that seek, or otherwise support, approval of Dauphinais Adjustment 2, be removed from consideration. Ignoring years of Commission practice, the Burlington Group erroneously interprets §8-406.1 of the Public Utilities Act to require intervenors and Commission Staff to oppose projects as a whole, rather than propose modifications to them.² This interpretation creates absurd results by ignoring Commission precedent regarding the review of least-cost considerations, as required by the

¹ The Burlington Group has defined itself as members: Tom Frey, Robert and Carolyn Barnes, Craig Luxton, Frederick and Shaena Dietz, David and Pamela Neisendorf, Tim and Christine Polz, and William Manns. Several of these members have had notice of these proceedings since December, 2013 – with Mr. Polz even attending a hearing.

² Under the Burlington Group interpretation, that is, having intervenors seek denial of Applications for Certificates, rather than simply propose modifications to routing, massive amounts of resources and time would be wasted. Likewise, under the logic of the Motion to Strike, a Staff engineer who takes issue with a type of conductor used would have to seek to have the Application denied as a whole, rather than put on a case for a modification of the proposed conductor type.

Appellate Courts.

2. Administrative agencies' constructions of statutes are considered, at a minimum, persuasive. *Hardway v. Bd. of Educ.*, 1 Ill. App. 3d 298, 301 (5th Dist. 1971). For example, the Supreme Court of Illinois has noted that this Commission's "consistent and long-standing administrative interpretation" of the Public Utilities Act must have a persuasive effect. *Miss. River Fuel Corp. v. Ill. Commerce Comm'n.*, 1 Ill. 2d 509, 514 (Ill. 1953). It is this Commission's long-standing interpretation of the Act to allow and compare proposed modifications to utility submitted routes as part of the least-cost analysis.

3. Contrary to the Burlington Group's assertion, there is authority for the Commission's consideration of intervenor submitted routes. This Commission has repeatedly utilized intervenor submitted routing to determine the least-cost means of siting projects. See, e.g., First Order on Reh'g, p. 7, *In re Ameren Transmission Co. of Ill.*, Docket 12-0598 (Feb. 5, 2014); Order, p. 10, *In re Ill. Power Co. d/b/a Ameren IP & Ameren Ill. Transmission Co.*, Docket 06-0706 (Mar. 11, 2009) (devoting 55 full pages to analysis of routing modifications in order to reach least cost). The Burlington Group fails to recognize that it is actually an abuse of discretion to not consider and evaluate intervenor submitted routes. *Citizens United for Responsible Energy Development v. Ill. Commerce Comm'n.*, 285 Ill. App. 3d 82, 93 (5th Dist. 1996) (calling the failure to order additional investigation into least-cost considerations regarding route comparison an abuse of discretion). This Commission has even developed a twelve-factor analysis for this very purpose. See, e.g., First Order on Reh'g, p. 7, *In re Ameren Transmission Co. of Ill.*, Docket 12-0598 (Feb. 5, 2014); Order, *In re Ameren Transmission Co. of Ill.*, Docket 12-0598 (Aug. 20, 2013).

4. The Appellate Courts have not only failed to take issue with this practice, but, as noted above, have expressly required consideration of alternative routes. See, e.g. *Kreutzer v. Ill. Commerce Comm'n.*, 404 Ill. App. 3d 791, 806 (2d Dist. 2010) (discussing an intervenor submitted

route and the Commission's consideration of the same); *Citizens United for Responsible Energy Development*, 285 Ill. App. 3d 82.

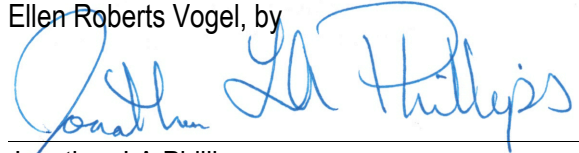
5. It would be highly prejudicial to strike any portion of the undefined items the Burlington Group wishes to have removed from the record. The SKP Group has spent resources and time in order to provide this Commission with hard facts with which it can make least-cost decisions. Despite at least one Burlington Group member having known of these proceedings for nearly seven months, the Burlington Group wants to have this Commission commit an abuse of discretion rather than put forth its own case. For the foregoing reasons, the Motion to Strike should be denied.

WHEREFORE, the SKP Group respectfully requests that the Burlington Group's Motion to Strike be denied.

June 23, 2014

Respectfully submitted,

William Lenschow, Thomas Pienkowski, Kristine Pienkowski, John Tomasiewicz, Jerry Drexler, Kristin Drexler, Robert Mason, Diane Mason, and Ellen Roberts Vogel, by



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